IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 4849 OF 2004

IN

CRIMINAL APPEAL NO.728 OF 2001

Gyanchand M. Gupta .. Applicant

versus

State of Maharashtra .. Respondent

...

Mr.S.M. Oak for the applicant.

Mr.R.Y. Mirza, APP for the State.

CORAM : V.M. KANADE, J

DATED : 3rd November 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP appearing on behalf of the State.

2. The applicant is seeking stay of the order passed by the Addl. Adhoc Sessions Judge, Thane in Sessions Case no. 292/99 to the extent that it prescribes set off for the 50% of the period the

applicant has undergone during trial. The learned counsel relies on section 428 of the Code of Criminal Procedure.

3. In my view, the trial Court has clearly erred in directing that the set off shall be for half the period of the sentence which he has served in jail. This is directly contrary to section 428 of the Code of Criminal Procedure. Section 428 of the Code of Criminal Procedure reads as under:-

> **428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.** Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction and the liability of such person to undergo imprisonment on such conviction shall be restricted to the

remained, if any, of the term of imprisonment imposed on him.

4. The order of the trial court is stayed to that extent, pending hearing and final disposal of the Criminal Appeal.

5. Jail authorities are therefore directed to give set off for the entire period of detention.

6. Criminal Application is disposed of in the above terms.

V.M. KANADE, J